

<b>POLICE/SHERIFF'S DEPARTMENT</b>		<b>GENERAL ORDERS</b>	
<b>SUBJECT: Constitutional Safeguards</b>		<b>NUMBER: 2-1</b>	
<b>EFFECTIVE DATE: July 1, 1999</b>		<b>REVIEW DATE:</b>	
<b>AMENDS/SUPERSEDES: GO 2-1, October 1993</b>		<b>APPROVED: _____ Chief of Police/Sheriff</b>	
<b>CALEA STANDARDS: 1.2, 42.2.1, 42.2.9, 44.2.2-.3</b>		<b>VLEPSC STANDARDS: ADM.02.01-.05, OPR.02.03, OPR.04.04, OPR.12.06</b>	

## NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

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Authority; limitations  
Confessions  
Consent to search  
Constitutional safeguards  
Curtilage  
Discretion  
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*Miranda* rights  
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## I. POLICY

Of all the actions an officer might take during the course of duty, the ones with the most severe consequences concern constitutional rights. The use of deadly force might result not

only in injury or death but a review of the constitutionality of the act. Similarly, the arrest of a person for a misdemeanor shoplifting, by contrast, invokes the law of arrest and search and seizure issues that are controlled by the Constitution. The U.S. Constitution and the Bill of Rights guarantee every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation, state, and the town/county of *[[ ]*. The department expects officers to observe constitutional safeguards scrupulously and knowledgeably. The department further expects that officers understand the limits and prerogatives of their authority to act. Respect for the civil liberties of citizens shall be the paramount concern in all enforcement matters.

## II. PURPOSE

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

## III. PROBABLE CAUSE AND REASONABLE SUSPICION

### A. Probable cause

Searches (with the few important exceptions outlined in this order) and all arrests are based on the police officer's perception of probable cause. According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

1. An officer must have probable cause to undertake a search or make an arrest.
2. When an officer has appropriate probable cause, he or she may undertake a complete body search (not including a body-cavity search), record the suspect's fingerprints, take the suspect's photograph, and jail him. The aim of probable cause is **to make a formal charge**.

### B. Reasonable suspicion

Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.

1. An officer must have reasonable suspicion to temporarily detain a citizen.
2. When an officer has reasonable suspicion, he or she may undertake a pat-down of a suspect's outer clothing for weapons and record the circumstances of the encounter. The aim of reasonable suspicion is **to resolve an ambiguous situation**.

C. Elements of probable cause

1. Probable cause may be established through investigation and observation, witnesses, confidential informants, or through anonymous sources provided that the information is corroborated by investigation.
2. Unnamed informants may be used in an affidavit for a search warrant if the informant has first-hand knowledge of the investigation and information is included about why the informant is credible and reliable. See GO 2-11 for further information on informants.

#### IV. PROCEDURES - General

A. Law-enforcement authority

1. *Code of Virginia* § 15.2-1701 authorizes any locality to organize a police force and § 15.2-1704 invests the police force of the locality with authority to prevent and detect crime, apprehend criminals, safeguard life and property, preserve the peace, and enforce state and local laws and ordinances.
2. § 49-1 requires that all officers, before performing their duties, take an oath whereby they swear to support the Constitution of the United States and the Constitution of the Commonwealth of Virginia.

B. Limitations on law enforcement authority

Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general and commonwealth's attorney, departmental policies/rules and regulations, and town administrative decisions.

1. Statutory limitations

These limitations include, but are not limited to:

- a. Enforcement of laws outside of the town limits. § 19.2-250 grants authority to enforce state criminal laws one mile beyond the boundaries of the town except as specified.
- b. § 15.2-1725 grants the town authority to enforce laws and local ordinances on town-owned property located outside of its boundaries. Examples: airports, public hospital, public water supply or watershed, public park, public school, sewage treatment.
- c. § 15.2-1724 allows town officers to be sent anywhere in Virginia to assist another locality in meeting an emergency involving any immediate threat to life or public safety, as outlined in the statute. Further, § 15.2-1727-8 allows localities to enter into reciprocal agreements with localities outside Virginia to provide mutual aid. Notwithstanding the provisions of these two statutes, § 15.2-1730 allows the chief of police, in a declared emergency, to call upon other chief law-enforcement officers of towns or counties to provide law-enforcement assistance without a need to deputize officers from other jurisdictions.

## 2. Judicial limitations

Courts constantly interpret laws that place limitations on the authority of law-enforcement officers. The more common limitations address *Miranda* rights/warnings, rulings on search and seizure, eyewitness identification, and lineups. The department shall provide policy guidance concerning these decisions, as appropriate.

***[Note: The law of interviews, interrogations, and searches and seizures continuously evolves. Consult your legal advisor or commonwealth's attorney for guidance before adopting this model order.]***

## V. INTERVIEWS AND INTERROGATIONS

### A. Definitions

1. An **interview**, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or the citizen.
2. An **interrogation**, to paraphrase the Supreme Court, includes direct questioning (or its functional equivalent) about a crime or suspected crime, as well as any words or conduct on behalf of the police that may elicit an incriminating response from the suspect.

- a. Officers are reminded that an interrogation does not rely solely or exclusively on words; conduct can be the "functional equivalent" of asking questions.
3. A person is in **custody** when an officer tells him or her that he or she is under arrest. The functional equivalent of being in custody occurs when a reasonable person in the suspect's place would feel that his or her freedom of action has been restricted to the same degree as a formal arrest.

B. Rights admonition

1. In order to achieve uniformity in administering *Miranda* warnings, police officers shall be issued cards with the *Miranda* warnings and waiver on them. Before custodial interrogation, officers shall advise suspects of their rights by reading aloud from the card the following:
  - a. "You have the right to remain silent."
  - b. "Anything you say can and will be used against you in a court of law."
  - c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."
  - d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
  - e. "You may stop talking at any time."
2. After the warning, in order to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:
  - a. "Do you understand each of these rights I have explained to you?"
  - b. "Having these rights in mind, do you wish to talk to us now?"
3. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form. **Officers shall interrogate suspects only when they have knowingly and intelligently waived their rights.** Officers **shall cease** questioning whenever the suspect invokes the right to silence or requests the presence of counsel.
  - a. Officers shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.

- b. If a suspect, once in custody, requests counsel after being advised of *Miranda* rights, he or she **cannot** be interrogated again about the crime for which he or she was charged, other crimes, or by any other officers unless (1) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Officers therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation. If a suspect refers to counsel but his or her intentions are unclear, officers may question the suspect further to clarify his or her intentions.
  - c. If the suspect is deaf or unable to speak English, the interrogating officer shall notify the on-duty supervisor and shall immediately arrange to obtain an interpreter. *[Insert here your local arrangements for obtaining sign-language or other language interpreters. If the suspect does not speak English, no interrogation should be attempted without a competent translator.]*
- 4. Officers will take care when advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Officers should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained and the waiver obtained.
  - 5. If a suspect has invoked his or her right to silence, officers may interrogate the suspect **if**, after a passage of time, the suspect initiates communication with officers. Before questioning, however, officers shall again administer *Miranda* warnings and shall obtain a written waiver.

### C. Voluntariness of confessions

The courts have provided officers with much latitude in interrogating suspects. If a suspect claims that he or she was coerced into confessing, the courts will examine the interrogation according to the **totality of the circumstances**. If interrogation methods appear to overcome the suspect's will, then the courts will find any resulting confession to be involuntary. If officers use trickery, threats, or offer promises to obtain confessions, they must:

- 1. Carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and
- 2. Coupled with the background characteristics, choose an appropriate mix of interrogation tactics and environmental factors to convince the suspect to

confess without overbearing the suspect's will. **Note that *Miranda* warnings would have been given before the interrogation takes place, in most instances.**

D. Exemptions or special cases

1. *Miranda* warnings do not apply to the following situations which are non-custodial. This list is not all-inclusive:

- a. Brief on-scene questioning.
- b. Identification procedures such as fingerprinting, conducting a lineup, sobriety tests. (Questioning during booking **may** require *Miranda* warnings.)
- c. Volunteered, spontaneous statements. (Once the officer has heard the suspect express spontaneous incriminating statements, the officer shall then advise the suspect of *Miranda* rights and obtain a waiver before asking additional questions.)
- d. Brief investigative detention or stop/frisk.
- e. Roadside questioning during routine traffic stops, including DUI stops until custodial interrogation begins.
- f. Routine booking questions attendant to arrest.
- g. Questioning by private persons.

2. Public-safety exception

When an officer urgently needs information from a suspect because lives are in imminent danger, officers may delay giving *Miranda* warnings **until** the officers have received information sufficient to dispel the emergency. **Officers are advised that a genuine, life-threatening emergency must exist.**

E. Documentation requirements

1. Officers shall document the circumstances surrounding the conduct of interrogations and the recording of confessions. Required information includes but is not limited to the following:

- a. Location, date, time, duration of the interrogation.

- b. Identities of all persons present.
  - c. *Miranda* warnings given, the suspect's responses, and any waivers provided.
  - d. The nature and duration of any breaks or lapses during the interrogation and the reasons for them.
2. Video or audio tape recordings shall be treated as evidence and handled accordingly. Before the tapes are stored as evidence, a duplicate shall be made and likewise treated as evidence, the fact of it being a duplicate should be clearly noted on all paperwork.

## VI. SEARCH AND SEIZURE - Warrantless Searches

### A. Definition

A **search** occurs where (1) there is a "prying into hidden places by the police officer" and (2) the person whose premises or person is being searched has a reasonable expectation of privacy.

- B. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits and criminal prosecution. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances. **Search warrants are discussed under GO 2-2.**

1. Consent searches
2. Emergency searches
3. Plain view and "plain feel"
4. Abandoned property and open fields
5. Inventory searches of vehicles
6. When executing arrest warrants
7. Incident to arrest (see GO 2-4)
8. Pat-downs of suspicious persons (see GO 2-3)

**As a general rule, no arrest warrant or search warrant is required for an arrest in a public place, as long as probable cause exists.**



C. Consent

1. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search. Note that the officer doesn't have to have reasonable suspicion nor probable cause to make a consent search: he or she may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. **The sole justification for a consent search is the existence of knowing, intelligent, and voluntary consent.**

Consent searches must observe the following rules:

- a. Generally, the person granting consent must use, access, or control the property. A person having exclusive possession of some part of jointly-owned property can only give consent for a search of that part.
  - b. If two people have joint ownership of property, either may give consent. If possible, have the consenting party sign a written permission-to-search form.
  - c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, **unless** the tenant has been evicted or has abandoned the property.
  - d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use.
  - e. A parent may consent to a search of premises occupied by a dependent child if the parent also has access to the premises.
  - f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
  - g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).
2. Consent must be given voluntarily. If an officer requests consent from a citizen under circumstances which a reasonable person would consider coercive, then officers must seek a warrant. The officer may have the burden of demonstrating voluntariness.
  3. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant if probable cause exists.

4. Refusal to give consent, in itself, cannot justify further law-enforcement action.
5. The scope of a consent search is limited to the area for which consent has been given, and within this area officers may search only into areas where the objects sought could reasonably be hidden.

D. Emergency searches

1. A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances."
2. Eleven considerations determine whether an emergency exists:
  - a. The degree of urgency involved and the time required to get a warrant.
  - b. Officer's reasonable belief that contraband is about to be removed or destroyed. [Note that not all crimes are serious enough to create exigent circumstances. See "e" below.]
  - c. The possibility of danger to others including officers left to guard the site.
  - d. Information that the possessors of contraband are aware that police are on their trail.
  - e. Whether the offense is serious, or involves violence.
  - f. Whether officers reasonably believe the suspects are armed.
  - g. Whether the officers have probable cause at the time of entry.
  - h. Whether the officers have strong reason to believe the suspects are present on the premises.
  - i. The likelihood that the suspects will escape.
  - j. The suspects' entry onto premises after hot pursuit. To justify warrantless entry following hot pursuit, the arrest process must have begun away from the premises, **and** the offender knows that he or she is under arrest, **and** the offender tries to avoid arrest.

- k. A reasonable belief that someone on the premises is in distress and in need of emergency assistance.
- 3. If officers enter premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further **unless** they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.

E. Plain view

- 1. A plain-view seizure is, technically, not a search. To make a plain-view seizure of property (contraband, fruits, or instrumentalities of the crime), two requirements must be met:
  - a. From a lawful vantage point, the officer must observe contraband left in open view; and
  - b. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
- 2. During a lawful frisk (stemming from a lawful stop), if an officer detects an object that is or might reasonably be an item that is contraband or other criminal evidence, then the object may be seized. Threatening items such as weapons may always be removed during frisks. Non-threatening items may be removed **only** if their contraband or evidentiary nature is immediately apparent (the so-called "plain-feel" rule).

F. Abandoned property and open fields

- 1. A search warrant is not required for property that has been abandoned.
- 2. To constitute abandoned property, two conditions must apply:
  - a. Property was voluntarily abandoned.
  - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.
- 3. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, searches of which require a warrant. **Curtilage** is the area of a dwelling which is necessary, convenient, and habitually used by the family for domestic purposes. The extent of curtilage

of a private residence is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation. Note that under some circumstances surveillance (e.g., aerial surveillance) of activities within curtilage may take place without a warrant.

G. Inventories of vehicles

1. The department requires officers to inventory any lawfully impounded vehicle, or a vehicle removed from the street and placed in police custody. Any evidence or contraband found during the inventory may be used to formulate probable cause for a subsequent search or arrest. Vehicles shall be inventoried per departmental procedure which requires an inventory of the entire contents, including closed containers (provided they can be opened without breakage). The purpose of an inventory is to ensure safekeeping of private property and to protect the department from liability. To repeat, in order to justify an inventory of a vehicle, the following conditions must be met:
  - a. Officers must have lawful custody of it.
  - b. The inventory shall be conducted pursuant to departmental policy.
  - c. The scope of the inventory shall be limited to those parts of a vehicle likely to conceal important, hazardous, or valuable items including, but not limited to, the passenger compartment, the trunk, and glove compartment.
2. Closed containers may be examined if they are likely to contain valuable property. If closed containers are locked or sealed, they shall not be forced open but simply logged on the inventory form. ***[Agencies should obtain legal advice before creating a policy that allows locked areas of an automobile to be forcibly opened during an inventory.]***
3. The vehicle and its closed containers shall not be damaged.

H. When executing arrest warrants

1. General guidance

An officer with an arrest warrant may search for the defendant in his or her own home **provided that** the warrant was valid; the officer searches the defendant's home (and not someone else's); and probable cause exists that the

defendant is home at the time of the search. The search for the defendant must be limited to places where he or she might be found.

2. Protective sweep

Following the execution of an arrest warrant, officers may undertake a "protective sweep" of the premises where the arrest takes place without a warrant. Certain limitations must be observed, however:

- a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to officers.
- b. Incident to arrest, officers may, without probable cause or reasonable suspicion, look into closets or other spaces immediately adjoining the place of arrest where threatening persons might be located.
- c. In order to extend the protective sweep beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that persons may be on the premises who pose a threat. In such cases, the sweep is limited to examining places where a person might hide.
  - (1) Officers shall carefully document their reasonable suspicion.
- d. During a protective sweep, evidence discovered in plain view may be seized.
- e. The sweep must cease when officers have dispelled a reasonable suspicion of danger.

(Note: With a search warrant, a protective sweep is always justified.)

## **VII. EYEWITNESSES**

- A. Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by officers. Eyewitness identifications may take the following form.

1. On-scene identification

One-on-one identifications have been held constitutional so long as the period of time between the offense and the identification is brief. One to three hours would be a reasonable amount of time.

2. Lineups

Lineups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. The accused has the right to have an attorney present during the lineup and the lineup may not take place until the attorney is present. The attorney may not offer any suggestions concerning the conduct of the lineup, but may merely observe. Officers shall document the date, time, place, name of participants and witnesses, and the location of suspect/participants in the lineup.

3. Photo lineups

In conducting photo lineups, the photos shall depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo lineup containing 6-8 photos is reasonable. Photographs shown to witnesses shall not contain any identifying information. Photo lineups will be documented as under (2) above.

B. Hearsay

1. Officers shall understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.

a. According to the Virginia Supreme Court, hearsay is "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say."

2. Hearsay is generally inadmissible in court.

3. Some hearsay is useful as evidence. Some exceptions to the Hearsay Rule, and therefore admissible include:

a. A dying declaration or a statement, oral or written, made by a mortally wounded person who knows that he is about to die and has abandoned hope of recovery.

b. Spontaneous declarations, or exclamations of a participant or bystander concerning an incident, made without time for reflection.

c. Public records, or reports prepared by public officials under a duty imposed by law or regulation.

*[Check with your commonwealth's attorney regarding the admissible hearsay of a young child who appears to be reporting abuse.]*

## VIII. VEHICLES

In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant whenever sufficient time exists to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative that officers understand the different types of vehicle searches and their limitations.

### A. Definitions

1. For the purposes of this section, a **motor vehicle** is any vehicle operating or capable of being operated on public streets or highways, from trucks to automobiles to mobile homes. A vehicle that has been immobilized in one location for use as a storage facility or home is not a motor vehicle for Fourth Amendment purposes.
2. For the purposes of this section, a **search** is an examination of a motor vehicle with an investigative motive, that is, to discover evidence or to examine the vehicle identification number (VIN) to ascertain ownership.

### B. When warrantless vehicle searches may be performed

As noted earlier, warrants shall be obtained to search vehicles, if feasible, unless an emergency exists. Any vehicle that has been disabled with little chance of its being driven away shall be searched with a warrant. In all other cases, vehicles may be searched without a warrant under the following circumstances:

1. When probable cause exists.
2. With the driver's consent.
3. Incident to the arrest of the occupants.
4. To frisk for weapons.
5. When necessary to examine the VIN or to otherwise ascertain ownership.
6. Under emergencies or exigent circumstances.
7. Inventories.

C. Searches may be conducted within the following limitations:

1. **With a warrant**, a search may extend anywhere within the vehicle, unless limited by the warrant itself.
2. **When probable cause exists**, a search may extend anywhere within the vehicle, unless the probable cause is limited to a specific part of the vehicle.
3. **When consent has been obtained** from the driver, officers may search the vehicle subject to any limitations specified by the consenting person. Consent shall be obtained in writing, if feasible.
4. **Searches incident to the arrest** of an occupant shall be limited to any area within reach of the arrestee. The area within reach is deemed to be the passenger compartment. The trunk, engine compartment, and any locked compartments shall not be searched **unless** immediately accessible to the suspect. (See GO 2-4 for a fuller treatment of searches incident to arrests.)
5. **Frisks for weapons** shall be confined to the passenger area. Any place not immediately accessible to the occupants, such as a locked glove compartment, shall not be frisked. **If** the contents of a container are immediately accessible to the subject, a closed container may be searched for weapons.
  - a. Note that an officer can order the suspect from the vehicle and frisk **both** the suspect and the vehicle.
6. **An entry into the vehicle to examine the VIN** or otherwise determine ownership must be limited to these purposes.
7. **An emergency search** of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.

**Note: If the initial search under the above conditions gives rise to probable cause that evidence, contraband, fruits, or instrumentalities of the crime might be found elsewhere in the vehicle, officers may search those areas that might reasonably contain such items.**

D. Containers within the vehicle

As a rule, no container within a vehicle shall be searched unless it might contain the item(s) sought.



1. Procedures for unlocked containers
  - a. In a **probable cause search**, containers may be opened wherever found in the vehicle.
  - b. When the passenger area is searched **incident to an arrest**, containers within the passenger area may be opened.
  - c. During a **consent search**, containers may be opened provided that the terms of the consent either so permit or reasonably imply permission.
  - d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.

2. Procedures for locked containers

Under most conditions, locked containers shall be opened under a warrant unless one of the following circumstances has been met:

- a. Consent has been given.
- b. Probable cause exists to search the vehicle and the object of the search might be found in the container. (Even in this circumstance, a warrant is preferred.)
- c. Inventory.

E. Conduct of the vehicle search

1. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.
3. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases. See GO 2-34.

## IX. LIMITATIONS ON AUTHORITY

A. Limitations on law-enforcement authority by local courts

Occasionally, the local courts may limit law-enforcement authority to enforce state statutes and local ordinances. The department manual shall contain relevant orders offering appropriate guidance to officers. These limitations include, but are not limited to:

1. The enforcement of certain parking ordinances.
2. The handling of juvenile offenders.
3. The issuance of summonses as opposed to arrests/incarceration.
4. Restrictions relating to the animal control ordinance.

B. Limitations on law enforcement authority by the commonwealth's attorney

Occasionally, the commonwealth's attorney may issue opinions to the department imposing limitations on officers. These areas include, but are not limited to:

1. Prosecution of certain cases.
2. Extradition.
3. Enforcement of certain statutes pending opinions from the attorney general's office.

C. Limitations on law-enforcement authority by the town manager or chief of police

Limitations on police enforcement actions by town council, town manager, or the chief of police include, but are not limited to:

1. City/town tag violations.
2. Parking violations.

D. Changes in laws/interpretational limitations

Periodically, changes take place which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the commonwealth's attorney. In case immediate changes in departmental operations are required, the commonwealth's attorney's office may provide information orally and confirm it in writing.

## **X. CONSTITUTIONAL REQUIREMENTS: GENERAL**

### **A. Compliance with constitutional requirements during criminal investigations**

1. All officers when conducting criminal investigations shall take all precautions necessary to ensure that all persons involved are afforded their constitutional protections. Officers shall ensure that:
  - a. All statements or confessions are voluntary and non-coercive.
  - b. All persons are advised of their rights in accordance with this general order.
  - c. All arrested persons are taken promptly before a magistrate for formal charging.
  - d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
  - e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See RR 1-13, Media Relations.

### **B. The use of discretion by officers**

1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
2. With the exception of rules and regulations, general orders give officers procedures to follow for common or critical enforcement tasks. By definition, general orders afford officers a window of discretion within which to act. General orders are to be followed unless unusual or extreme circumstances dictate another course of action. In this case, officers shall make reasoned decisions in their discretion based on good judgment, experience, and training. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

C. Alternatives to arrest/prearrest confinement

1. Under certain circumstances, officers are faced with situations where an arrest and prearrest confinement will not be possible. In such cases, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply to give a warning. Examples:

- a. Mentally or emotionally disturbed persons.
- b. Domestic situations where counseling may be appropriate except where probable cause requires an arrest, as detailed in GO 2-32.
- c. Juvenile offenders. See General Order 2-29, Juvenile Procedures.
- d. Transient persons who need shelter and food.
- e. Certain misdemeanor cases.

2. Authority to issue summonses in lieu of arrest/confinement

- a. § 19.2-74 authorizes officers to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except D.U.I. and drunk in public. Additionally, § 19.2-74 authorizes the use of summonses when enforcing city ordinances.
- b. In determining whether a summons should be used, the officer shall:
  - (1) Decide whether the offense committed is serious.
  - (2) Make a judgment as to whether the accused poses a danger to the public or himself.
  - (3) Decide, based on circumstances, whether the person may disregard a summons.

3. Informal handling of criminal matters

Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the citizen to an appropriate social services agency.

4. Use of warnings as an alternative to arrest

The use of warnings may sometimes provide a solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the officer shall consider:

- a. The seriousness of the offense.
- b. The likelihood that the violator will heed the warning.
- c. The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.

5. Limitations on intelligence activity

- a. Departmental intelligence gathering activities shall be limited to that information concerning criminal conduct that presents a threat to the community.
- b. Departmental personnel and equipment shall only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the chief of police/sheriff.
- c. Intelligence information shall be collected, used, and processed in full compliance with all laws.
- d. Informants, see GO 2-11.